Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM: TL-N-4518-01
RVHosler

date:

to: Jackie Topping, Team Manager LMSB

from: Associate Area Counsel

subject: T

Taxpayer: Tax year:

Request for Refund

This memorandum is in response to your request for advice received by our office on August 13, 2001. This memorandum should not be cited as precedent.

ISSUE

Whether the Service can submit a report, under I.R.C. § 6405(a), to the Joint Committee on Taxation regarding a refund requested by the taxpayer in the amount of § for the year when the refund results from unclaimed alternative minimum tax credit carryovers, the amount of the carryovers has been examined by the Service, the taxpayer will not post security for the refund, and the examination of the year will not be completed until

CONCLUSION

There are no legal impediments preventing the Service from submitting a report to the Joint Committee on Taxation under I.K.C. § 6405(a) for an unexamined year even though he taxpayer has not posted security. Submission of such a report, however, would contravene the Service's published procedures.



, , (b)(7)e			
, , (b)(7)e			

FACTS1

7	[he_	taxpayer,										
								taxpa	-			_
		mination,										tax
years		and		Ιt	is a	inticipa	ated	that	the	curre	ent	
examir	nati	on cycle	will	be	con	pleted	on					

On ______, the taxpayer filed Form 1120 with the Service. At the time of the filing, the taxpayer was entitled to minimum tax credit carryovers in excess of \$ ______, which carryovers were available to reduce its regular tax liability for the year ______. The minimum tax credit carryovers arose through the year ______ and have been examined by the Service in prior examination cycles.

At the time that the taxpayer filed its return for taxpayer had a number of examination issues pending from prior examinations. These pending issues potentially could have reduced the minimum tax credit carryover available to the taxpayer in the year to these uncertainties regarding the amount of minimum tax credit which would ultimately be available in the year the taxpayer did not claim any of the available credit on its

By the taxpayer and the Service had resolved some of the potential examination issues and it became apparent that the taxpayer would have minimum tax credit of at least available after settlement of the prior examinations. The taxpayer then filed a Form 1120X to claim a refund for the year for the unutilized minimum tax credits arising in prior years.

The claim for refund is subject to the provisions of I.R.C. § 6405(a) and IRM Handbook No. 4.3.5, section 6.5, Reports Involving Claims and Unexamined Years. I.R.C. § 6405(a) provides

¹ In connection with this issue our office contacted the following individuals: Ross Larsen, Team Leader; Donald Buckallew, Joint Committee Report Coordinator; Richard Clement, Joint Committee Report Reviewer; and Norman Brand, Senior Counsel for the Joint Committee on Taxation.

that a refund may not be made until 30 days after the Service has submitted a report to the Joint Committee on Taxation. Under the handbook provisions, a report may be submitted to the Committee prior to completion of an examination only if the taxpayer posts a bond or other security.

The taxpayer has requested that the requirement to post a bond or other security be waived prior to the submission of the report to the Committee. In support of taxpayer's position, the taxpayer's representative states:



The Service supports the position of the taxpayer and agrees that the refund should be issued without the posting of security because no harm to the government will occur. The taxpayer is clearly entitled to the refund and has approximately \$ in assets.

DISCUSSION

Refunds and credits that exceed a threshold amount² are subject to review by the Joint Committee on Taxation. The general rule for these large refunds is that they may not be issued to a taxpayer until at least 30 days after the IRS submits a report on the matter to the Joint Committee, providing that committee with an opportunity to review the decision. (I.R.C. § 6405(a)). The report is required to state the name of the person (or business) to whom the refund or credit is to be made, the amount involved, a summary of the facts, and the IRS's decision on the matter.

² A report to the Joint Committee is required for refunds or credits in excess of \$1 million before December 21, 2000, and in excess of \$2 million on or after December 21, 2000. (I.R.C. § 6405(a), as amended by the Community Renewal Tax Relief Act of 2000 (P.L. 106-554)).

Pursuant to IRM Handbook No. 4.3.5, section 6.5, modified procedures are authorized where the taxpayer requests that a refund be made prior to the completion of the examination and no disadvantage to the government will occur. The taxpayer does not need to present a reason for requesting the refund prior to examination.

For purposes of I.R.C. \$ 6405(a), the IRM Handbook states that a modified expedite refund report may be submitted prior to examination provided:

- (a) There is a claimed I.R.C. § 6405(a) amount in excess of \$1,000,000 in an unexamined source or carryback year, and examination will not be completed within six months from the date that the taxpayer requested that the refund be made.
- (b) The taxpayer posts a bond or other security.

IRM Handbook No. 4.3.5, sub-section 6.5.2, provides in part, that the report must set forth the following:

Brief background information on the taxpayer and why the refund is being issued prior to the examination or survey action (e.g., refund requested by the taxpayer and no disadvantage to the Government), that security has been posted, and that the report is being submitted under the procedure contained in Section 6.5, of this handbook. (emphasis added.)

The procedures to be followed for the posting of bond or security by the taxpayer are as follows:

The taxpayer must post bond or similar security (e.g., a collateral agreement with an irrevocable letter of credit in favor of the district director having jurisdiction over the return) for the amount of the refund. (Refer to instructions for the receipt and processing of bonds and similar security in former IRM section 5680, Processing and Disposition of Collateral, and former IRM section 5740, Collateral Security.) the discretion of the district director, an additional amount of bond or security may be required with respect to interest on the refund in the event all or part of the refund must be repaid. This amount should be measured by the reasonable anticipated time to complete the examination and the interest rate currently in effect under I.R.C. § 6621. The posting of the bond must be accomplished prior to the submission of the Expedite Refund report to the National Office.

of the requirement in (2) below to submit a copy of the executed security agreement with the Expedite Refund report, a letter of credit securing a collateral or similar agreement may be executed subsequent to the expiration of the 30-day period after the submission of the report. The refunds must not be released prior to the Service's receipt of the executed letter of credit.

If the taxpayer and district director enter into any type of written security agreement other than the posting of bond, it is necessary to submit a copy of the executed agreement with the expedite refund request report. The agreement should reflect the amount of the proposed refund, plus previously assessed interest (if any) and (if required by the district director) estimated refund interest. The agreement must be executed by the taxpayer prior to submission. Upon expiration of the 30-day period after submission of the report, the district director having jurisdiction over the case should execute the agreement on behalf of the Service. Coordination with District Counsel in the development of the security agreement is required.

(IRM Handbook No. 4.3.5 Sub-Section 6.5.3).

Here, the taxpayer submitted a claim for refund based on available minimum tax credit carryovers which have been examined by the Service. Had the taxpayer included these credits on its originally filed return, it is apparent that the Service would have allowed credits and the taxpayer would not have needed to file a refund claim.

Section 6405(a) prohibits issuance of a refund until 30 days after submission of a report to the Committee. It does not, however, impose the requirement that taxpayer post security for the refund. Neither the statute itself nor the related regulations require the posting of security prior to the issuance of the refund. Thus, there are no apparent legal impediments to the issuance of the refund in the absence of security.

On the other hand, the published guidance contained in the IRM Handbook requires a taxpayer in these circumstances to post security before a report by the Service will be issued to the Joint Committee. IRM Handbook No. 4.3.5, section 6.5. Security is required to be posted by the taxpayer to ensure no disadvantage to the government will occur. However, there is no guidance set forth for determining circumstances in which the government will be disadvantaged and alternatives means available

for eliminating any perceived disadvantages. In the absence of any security waiver provisions, issuing a report in these circumstances would conflict with the Service's current policy.

The security agreement is between the taxpayer and the current counterpart to the District Director. (b)(7)a, (b)(7)e, (b)(5)(DP)

Although there are no legal impediments to waiving the security requirement, the effect on the Service's operating policies should be addressed. A principal policy of the Service is the consistent treatment of taxpayers. Such consistency is achieved, in large part, through published policies and procedures such as those set forth in the IRM Handbook. In this case, the published policy of the Service clearly requires the posting of security prior to a submission of a report to the Joint Committee.

In conflict with policy of consistency, is the policy of the Service to provide a high level of customer service to all taxpayers. Here, the Service has examined the source years for the minimum tax credit carryovers. There is no doubt that the taxpayer is entitled to the tax credits and would have received the requested refund if the credits had been included on its originally filed return. The taxpayer would now be entitled to receive the refund except for the Service's administrative

provisions. Instead of claiming the credits, the taxpayer took

⁽b)(7)

an initially conservative position on its return. It chose to wait until prior examination issues had been resolved before claiming the minimum tax credits it was entitled to. Under these circumstances, it certainly appears reasonable that the refund could be issued without the posting of security.

, , (b)(7)a, (b)(7)e, (b)(5)(DP)		
, , (b)(7)a, (b)(7)e, (b)(5)(DP)		

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Be advised that we consider the statements of law expressed in this memorandum to be significant large case advice. We, therefore, request that you refrain from acting on this memorandum for ten (10) working days to allow the Division Counsel (Large and Mid-sized Business) an opportunity to comment. If you have any questions regarding the above, please contact the undersigned at (602) 207-8056.

DAVID W. OTTO
Associate Area Counsel
(Large and Mid-Size Business)

By:				
_	RICK	٧.	HOSLER	
	Atto	rnev	7	

Attachments